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TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9612
Fax (978) 264-9630

Don P. Johnson
Town Manager

FILE COPY

September 26, 2003

President **MARK BURAK**
Bellows Farm Condominium Trust

~~President~~ **RICHARD BRUCE**
Briar Brook Condominium

President
The Arbors **SAM NABLO**

Dear residents:

The Acton Board of Selectmen is in receipt of many requests for information and actions regarding Davis Road. To that end, they have included a half hour at the October 6, 2003 Board of Selectmen's meeting at 7:35 p.m. in room 204 of the Acton Town Hall to discuss this issue with you and all interested parties. We have also asked Northwest Development, Ronald Peabody, to be in attendance.

Please be sure to notify your residents of this meeting as soon as possible so they might attend this if they wish.

Very truly yours,

Christine M. Joyce
Town Manager's Office

Cc: (Ronald Peabody) Northwest Development, Great Road

Christine Joyce

From: Don Johnson
Sent: Monday, September 29, 2003 12:39 PM
To: Christine Joyce
Subject: FW: To the Board of Selectmen, Town of Acton 4 August,2003/Davis Road Acceptance

Chris:
Please include with materials for the discussion at 7:35 on 10/6.

-----Original Message-----

From: Walter Foster II
Sent: Thursday, September 25, 2003 1:16 PM
To: Burak, Mark; Board of Selectmen; Manager Department; Roland Bartl
Cc: Bob Jack; John G. Scanlon; Pat Halm II; Brown, Stan (E-mail); samnablo; cbirnbrich@thedartmouthgroup.com; William S. Beebee (E-mail); Ellen M. Carman (E-mail); terry.manning1@attbi.com; Jim Wu; Bill Beebee (new work); lwyu2003@yahoo.com; Melanie.Liu@FMR.COM; liu@vfrl.mit.edu; xhchen00@yahoo.com; tingche@luce.com; toro@riskeng.com; lulin6666@yahoo.com; pumingz@yahoo.com; ksrikrish@yahoo.com; dstewart@invention-machine.com; Mark.Alcaide@FMR.COM; Ann Chang
Subject: Re: To the Board of Selectmen, Town of Acton 4 August,2003/Davis Road Acceptance

Dear Mr. Burak and all residents of Bellows Farm Condominium:

Thank you for your inquiry and many emails regarding the acceptance of Davis/Bellows Farm/Briar Hill roads. As you know representatives from your condominium board attended a Board of Selectmen meeting in August and raised a number of issues at our opening meeting that evening. Since that time town staff has investigated issues concerning the acceptance of these roads. The Board of Selectmen invite you or a representative and all residents of Bellows Farm to attend our next meeting on OCTOBER 6TH AT 7:35 PM at the Town Hall. At that time the Board of Selectmen intends to discuss the issues you have raised with all the interested parties including the Bellows Farm Condominium Trust, the Arbors and/or their representatives, the Briar Brook Condominium as well as the developer, Northwest Development. The Board has not yet taken any position as you reference in your email and can only do so in open meeting. The Middlesex District Attorney has published an Open Meeting Law Guide which states:

In light of the proliferation in the use of computers in recent years, it has become more common for persons, both at home and at work, to communicate through electronic mail, or "e-mail." Like private conversations held in person or over the telephone, e-mail conversations among a quorum of members of a governmental body that relate to public business violate the Open Meeting Law, as the public is deprived of the opportunity to attend and monitor the e-mail "meeting." Members of governmental bodies should also be cautious about communicating via e-mail on an individual basis. This is because private, serial conversations may reach a quorum of members without the knowledge of all participants. Private, serial discussions of public business involving a quorum violate the Law regardless of the knowledge or intent of the parties. Certain housekeeping matters may, of course, be communicated outside of a meeting. Questions concerning meeting cancellations and scheduling often must be discussed outside of a meeting.

Thank you for your interest and we look forward to seeing you on October 6th at 7:35.

Walter Foster
Chair, Board of Selectmen

10/3/2003

Dear Board and Mr. Johnson:

I sent this email six weeks ago and did not receive any response. While I understand that the issue was discussed that night, I would appreciate hearing from you regarding the town's position on this issue.

Thank you for your consideration.

Mark H. Burak
Nixon Peabody LLP
101 Federal Street
Boston, MA 02110
ph: 617.345.1242
fax 866.947.1787
mburak@nixonpeabody.com

-----Original Message-----

From: Burak, Mark

Sent: Monday, August 04, 2003 9:29 AM

To: 'bos@town.acton.ma.us'; 'manager@town.acton.ma.us'; rbartl@town.acton.ma.us; dabbt@town.acton.ma.us

Cc: Bob Jack; John G. Scanlon; 'Halm, Pat Home (E-mail)'; 'Brown, Stan (E-mail)'; 'samnablo'; Cathy Birnbrich (cbirnbrich@thedartmouthgroup.com); William S. Beebee (E-mail); Ellen M. Carman (E-mail); Manning, Terry L. (terry.manning1@attbi.com); Jim Wu; Bill Beebee (new work)

Subject: RE: To the Board of Selectmen, Town of Acton 4 August, 2003/Davis Road Acceptance

Dear Board of Selectmen and Mr. Johnson:

As the current President of the Bellows Farm Condominium Board of Trustees, I write on behalf of Bellows Farm Condominium regarding the issue of the acceptance of Davis Road (and Bellow Farm and Briar Hill Roads) that will be discussed during the citizens' concern portion of your meeting tonight.

We believe it is of paramount importance that the Davis/Briar Hill/Bellows Farm road acceptance be place on the town meeting warrant for Spring 2004. With 117 homes, at least two thirds of which have children (many very young), safety is an extremely important issue to our community. Speeding has been a continuing problem in our neighborhood and we have asked for police enforcement of speeding laws but cannot obtain it due to the private status of these significant roads.

There is no question that the intent of the subdivision plan is that these roads become public roads upon the completion of Bellows Farm (which occurred nearly three years ago). We also understand that the Developer has completed all items needed for the Town to accept these roads. We understand, however, that the reason this has not been accomplished is that a small portion of Davis Road ("Parcel F") was inadvertently conveyed to Briar Brook Condominium years ago and thus the Town will not accept Davis Road because it cannot accept all of Davis Road.

While we understand the position of the Arbors, it is not clear to us whether or not the developer of Bellows Farm, Northwest Development, has an obligation to obtain a reconveyance from Briar Brook Condominium or whether it is possible to do so. Indeed, it appears that Parcel F was inadvertently conveyed to Briar Brook years ago before Northwest Development became involved. We agree with the Arbors' Board

that any consideration to Briar Brook to do so, beyond perhaps the legal work, would be inappropriate. However, it appears that insisting that the developer undertake an obligation it may not have or may be unable to accomplish may ultimately prove ineffectual and time consuming.

As I understand, the Town has the option of electing to "take" Parcel F, which would allow it to accept the entirety of Davis Road. I also understand that the Town has an informal policy of not engaging in takings because of potential legal complications.

However, because of important public safety issues which are very important to our residents (and the residents the Arbors), our view is that the Town should reconsider that position and take Parcel F. That small portion of Davis Road has no real value at all (except, perhaps, to Briar Brook to leverage undeserved "consideration"). Thus, the Town should be able to take that portion of Davis Road with minimal problem or cost. This solution would avoid unnecessary, time consuming and ineffective legal wrangling between Northwest, the Town and Briar Brook while accomplishing the goal of making Davis Road and adjoining roads public ways and allow for community policing of speeding.

Alternatively, if the Town is adamant on not engaging in a taking, despite the public safety issue, we believe the Town should consider accepting the remainder of Davis Road, along with Briar Hill and Bellows Farm Roads now and let the Parcel F issue resolve itself over time.

I may be able to attend tonight's meeting but my schedule is unclear. However, my co-trustee, Bill Beebee, will be present. We also understand that the citizen's concern portion of the meeting is necessarily brief. If this issue cannot be fully discussed tonight, we would ask that you consider meeting with me and possibly other members of our Board to address this concern.

Thank you for your consideration.

Mark Burak
1 Old Cart Path

Mark H. Burak
Nixon Peabody LLP
101 Federal Street
Boston, MA 02110
ph: 617.345.1242
fax 866.947.1787
mburak@nixonpeabody.com

-----Original Message-----

From: samnablo [mailto:samnablo@comcast.net]

Sent: Thursday, July 31, 2003 12:33 PM

To: rbartl@town.acton.ma.us; Burak, Mark; dabbt@town.acton.ma.us

Cc: Bob Jack; John G. Scanlon; 'Halm, Pat Home (E-mail)'; 'Brown, Stan (E-mail)'

Subject: To the Board of Selectmen, Town of Acton 4 August, 2003

Please find attached a note I prepared for use in meeting with the Board of Selectmen in the Citizen's section on Monday, August 4, 2003 at 7 pm.

Sam V. Nablo
16 Quail Run.

Christine Joyce

From: Walter Foster II
Sent: Thursday, September 25, 2003 1:36 PM
To: Board of Selectmen
Subject: FW: To the Board of Selectmen, Town of Acton 4 August, 2003/Davis Road Acceptance

From: Walter Foster <WMFoster@smithduggan.com>
Date: Thu, 25 Sep 2003 13:16:10 -0400
To: "Burak, Mark" <MBURAK@nixonpeabody.com>, <bos@town.acton.ma.us>, <manager@town.acton.ma.us>, <rbartl@town.acton.ma.us>
Cc: Bob Jack <bobjack@rcn.com>, "John G. Scanlon" <john.g.scanlon@verizon.net>, "Halm, Pat Home (E-mail)" <p_halm@comcast.net>, "Brown, Stan (E-mail)" <stangles@aol.com>, samnablo <samnablo@comcast.net>, <cbirnbrich@thedartmouthgroup.com>, "William S. Beebee (E-mail)" <billbeebee@hotmail.com>, "Ellen M. Carman (E-mail)" <gecarman@msn.com>, <terry.manning1@attbi.com>, Jim Wu <Jim.Wu@scansoft.com>, "Bill Beebee (new work)" <wsb@alum.mit.edu>, <lwyu2003@yahoo.com>, <Melanie.Liu@FMR.COM>, <liu@vfrl.mit.edu>, <xhchen00@yahoo.com>, <tingche@luce.com>, <toro@riskeng.com>, <lulin6666@yahoo.com>, <pumingz@yahoo.com>, <ksrikrish@yahoo.com>, <dstewart@invention-machine.com>, <Mark.Alcaide@FMR.COM>, <ann.chang@verizon.net>
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